

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

MCI, INC. COMMENTS

MCI, Inc. (MCI) respectfully submits these comments pursuant to the Federal Communications Commission's (FCC or Commission) Public Notice (DA 05-103), in the above referenced docket, putting forth for comment the Petition for Declaratory Ruling filed jointly by Sprint Corporation (Sprint) and BellSouth Corporation (BellSouth) on October 13, 2004.¹ MCI agrees that the 90-day rule was adopted without adequate notice, is arbitrary and capricious, and is unlikely to prevent waste, fraud and abuse. Therefore the Commission should reconsider its conclusion that if an E-rate beneficiary has not paid its non-discounted share of charges for eligible E-rate services within 90-days after delivery of service that all funds disbursed should be recovered.

Under Commission rules, eligible schools and libraries may receive discounts ranging from 20 to 90 percent of the pre-discount price of eligible services by eligible providers, based on indicators of poverty and high costs.² In its *Fifth Report and Order*, the Commission adopted measures intended to protect against waste, fraud, and abuse in the administration of this schools and libraries universal service support mechanism (also

¹ Public Notice, Federal Communications Commission, DA 05-103, CC Docket No. 02-6 released January 18, 2005.

² 47 CFR § 54.505.

known as the E-rate program).³ The Commission states that amounts disbursed in violation of the statute or a rule that implements the statute or a substantive program goal must be recovered in full.⁴ As example the Commission, in the *Fifth Report and Order*, concludes that all funds disbursed should be recovered for any funding requests in which the beneficiary failed to pay its non-discounted share. It further concludes that a failure to pay more than 90 days after completion of service presumptively violates its rule that the beneficiary must pay its share.⁵ BellSouth and Sprint filed a joint Petition for Reconsideration of the Commission's conclusion that if an E-rate beneficiary has not paid its non-discounted share of charges for eligible E-rate services within 90 days after delivery of service that all funds disbursed should be recovered.⁶

While the Commission adopted a percentage discount mechanism in administering the E-rate program, there is no Commission rule that requires the beneficiary to pay the non-discounted amount within 90 days of completion of service, nor is there record to support the 90-day time period. Thus, the Commission in effect adopted a rule without proper notice and comment. Moreover, the rule is unclear in certain respects, such as whether completion of service is measured on a monthly or yearly basis.

MCI, like Sprint and BellSouth, wholeheartedly support the notion that beneficiaries should pay their non-discounted share of the bill, and do so in a timely

³ *In the Matter of Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order, CC Docket No. 02-6, FCC 04-190 (2004)(Fifth Report and Order).

⁴ *Id.* at para. 20.

⁵ *Id.* at para. 24.

⁶ Petition for Reconsideration of Sprint Corp. and BellSouth Corp., *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, filed on October 13, 2004.

fashion. We also support the idea of the Commission establishing some parameters around what constitutes timely payment. However, a 90-day time period from completion of service is not necessarily a realistic measure. As the petitioners point out there are complexities in billing under the E-rate program that could mean a longer period before invoicing the service. We also agree with petitioners that recovery of all E-rate funds disbursed is excessively harsh penalty in some cases, in particular if a beneficiary is merely late in its payment or has paid most, but not all, of its share. The accrual of penalties and interests may be a more appropriate means of encouraging prompt payment on the part of the beneficiary.

In conclusion, the Commission should reconsider its order on this point and seek comment on what should constitute a failure to pay its portion of the service by the beneficiary.

Respectfully submitted,

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